

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 7343 of 2005(Y)

PETITIONER:

1. A.M.SATHEESAN,
KIZHAKKEPOYILIL HOUSE, AVITANALLUR P.O.,
KOZHIKODE DISTRICT (PHYSICAL EDUCATION TEACHER,
PUNNASSERY A.M.U.P. SCHOOL, PUNNASSERY).
2. A.M.PRAMEELABHAI,
KIZHAKKEPOYILIL HOUSE, AVITANALLUR P.O.,
KOZHIKODE DISTRICT (PHYSICAL EDUCATION TEACHER,
NANMINDA-EZHUKULAM A.U.P.SCHOOL, NANMINDA).

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF
GENERAL EDUCATION, THIRUVANANTHAPURAM.
2. THE ASSISTANT EDUCATIONAL OFFICER,
BALUSSERY, KOZHIKODE DISTRICT.
3. THE MANAGER,
PUNNASSERY A.M.U.P.SCHOOL, P.O. PUNNASSERY,
KOZHIKODE DISTRICT.
4. THE MANAGER,
NANMINDA-EZHUKULAM A.U.P.SCHOOL, NANMINDA,
KOZHIKODE DISTRICT.

R3 & 4 BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

R1 & 2 BY GOVERNMENT PLEADER SHRI. LEKSHMI NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN W.P(C) 7343/05

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER IN G.O(MS) NO: 113/2000/G.EDN. DT. 6.4.2000
ISSUED BY THE 1ST RESPONDENT

EXT.P2: -DO- OF THE JUDGMENT IN O.P.NO: 29014/2001 DT. 3.10.2001 PASSED BY
THIS HON'BLE COURT

EXT.P3: -DO- OF THE ORDER IN G.O(MS) NO: 307/2004/G.EDN. DT. 4.10.2004
ISSUED BY THE 1ST RESPONDENT

EXT.P4: -DO- OF THE ORDER IN G.O(RT)NO: 4651/04/G.EDN. DT. 27.10.2004
ISSUED BY THE 1ST RESPONDENT

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/TRUE COPY/

P.A. TO JUDGE

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 7343 OF 2005

JUDGMENT

The petitioners were Physical Education Teachers appointed respectively in Punnassery A.M.U.P.School, Punnassery and Nanminda-Ezhukulam A.U.P.School, Nanminda in Kozhikode district. According to them, their appointments were made by the Managers in the light of G.O. (Rt.) No.807/91/G.Edn. Dated 14.3.1991, which permitted the Managers of aided schools to appoint at least one Physical Education Teacher in the school, irrespective of the number of students. Since their appointments were contrary to the provisions of Rule 6B of Chapter XXIII of the K.E.R., the controlling officers did not approve their appointments. The 1st petitioner was appointed on 28.10.1992 and the 2nd petitioner was appointed on 26.7.1993. Both of them left the services of the school on 24.9.1994 and 31.12.1995 respectively.

2. While so, the Government issued Ext.P1 order dated 6.4.2000, directing to approve the appointments of 54 Physical Education Teachers who were appointed by the Managers from time to time and who were

continuing in service on the date of the said order. The petitioners represented, claiming the benefit of that order. Their representations were directed to be considered by this Court by Ext.P2 judgment dated 3.10.2001. Later, the Government issued Ext.P3 order dated 4.10.2004, as per which the appointments of 46 Physical Education Teachers, who were covered by Ext.P1 Government order, were also approved. Soon thereafter, the petitioners were served with Ext.P4 order dated 27.10.2004, rejecting their claim for approval of their appointments. The Government found that the petitioners were not in service on the date of issuance of Ext.P1 and therefore, they are not eligible to get its benefit. This writ petition was filed, challenging Ext.P4.

3. The learned counsel for the petitioners submitted that the petitioners were appointed in the light of the Government order mentioned earlier dated 14.3.1991 and therefore, their appointments should also have been approved. But the said order is mentioned nowhere in Ext.P1 or Ext.P3. The claim based on that Government order is not seen raised or considered in Ext.P4 also. The petitioners have not produced that Government order in this writ petition also. Therefore, the claim based on that Government order cannot be considered by this Court.

4. Further, the appointments of the petitioners were made contrary to

the provisions of the Rules. In other words, sanctioned posts were not available to accommodate them. Therefore, they have no right to claim approval of their appointments and the Government also have no corresponding duty in this regard. So, I find nothing illegal with Ext.P4. Accordingly, the writ petition fails and it is dismissed.

1st December, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/